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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,206	03/01/2002	Brian Kohne	007287.00007	4670
22907 7590 03/23/2009 BANNER & WITCOFF, LTD. 1100 13th STREET, N.W. SUITE 1200 WASHINGTON, DC 20005-4051				
EXAMINER				
HOSSAIN, FARZANA E				
ART UNIT		PAPER NUMBER		
2424				
MAIL DATE		DELIVERY MODE		
03/23/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/090,206

**Applicant(s)**

KOHNE, BRIAN

**Examiner**

FARZANA E. HOSSAIN

**Art Unit**

2424

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 12 March 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☒ Applicant's reply has overcome the following rejection(s): 101 rejections.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-24.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

/Chris Kelley/  
Supervisory Patent Examiner, Art Unit 2424

Continuation of 11. does NOT place the application in condition for allowance because: The applicant argues that it would not have been obvious to modify Reynolds to include the disclosures in Rowe (Page 6). The applicant argues that the purpose of Reynolds is to overcome limitations associated with passive television program guides describes the frustration a user experiences with respect to passive guides due to being forced to wait until a list of program listings scrolls to display on the listings (Pages 6-7). The applicant argues that the reason for Reynolds's guide forecloses combining the program guides with other program guides (Page 7). The applicant believes as argued in the November 3, 2008 filing that Rowe's alleged disclosure would frustrate Reynolds's purpose (Page 7). The applicant argues that the Office's oversimplification of obviousness of KSR and Ortho and concludes the two interactive guides cannot be combined (Page 7). The applicant disagrees with all cited passages of Reynolds as the overlay technique onto a passive guide display screen (Page 8). The applicant finally argues that even if the passive guide constitutes a background area, nowhere does Reynolds teach or suggest displaying content selected in the interactive guide in the passive guide display screen wherein the selected content is overlapped by information related to a first broadcast program (Page 8).

In response to the argument, the applicant is focusing on two paragraphs related to the limitations that Reynolds invention is overcoming. The examiner would also like to re-assert that an interactive programming guide is met by an electronic programming guide that is interactive including allowing a user to select programs, which allows interaction between a guide and a user. The examiner disagrees with the argument of program guide elements cannot be combined with the Reynolds guide as the motivation is to provide a more convenient, efficient, aesthetically pleasing guide for the viewer to use. As stated in the final rejection mailed 01/12/2009, the Rowe reference can be combined with the Reynolds reference as Rowe discloses an interactive program guide (Figures 2-4, 6, 7 and 8) for the purpose of displaying content in response programming information in response to a selection of a category of programming information (Column 1, lines 11-15).

Reynolds discloses an interactive guide (Pages 8-9, paragraph 0090-0091) and based on an indication by a user for a program, overlaying interactive features on the background area including graphic display area or any suitable display area of the interactive guide (Pages 8-9, paragraph 0090-0093, 0096 Figures 3a, 82, 84, 3b, 87, 91, Figure 6, 91). The background area is any suitable display area of the interactive guide that is a graphic display area (Figures 3a, 82, 84, 3b, 87, 91, Figure 6, 91). The user can access additional information via text, graphics and/or video by selecting a listing (Page 9, paragraph 0092).

Rowe discloses determining that the first broadcasted program is selected for at least a time greater than a predetermined threshold (Column 10, lines 35-40, Figure 1, 32, 34); and a fourth unit, responsive to determining that the first broadcasted program is selected for at least a time greater than the predetermined threshold, displaying the selected content in the electronic program guide (Column 10, lines 18-40, Figure 1, 38, 34).

The examiner also addressed the arguments to the KSR rationale in the previous action. The examiner will not reiterate the same response as the examiner has already answered this argument. The examiner believes that the argument was made due to the applicant's disagreement over the combination of Rowe's program guide elements to Reynolds's hybrid guide because the applicant disagrees with the interpretation of the Reynolds's guide is an interactive guide.